

PAMELA JOHNSON,) 3:11-cv-00787-HDM-VPC
)
Plaintiff,)
) ORDER
vs.)
)
JOHN HARRAH, et al.,)
)
Defendants.)
)

I. Request for Judicial Notice

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1 *Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Incorporation by
2 reference allows the court to consider documents not attached to
3 the complaint if the authenticity of the documents is not
4 questioned and either (1) the plaintiff's claim depends on the
5 contents of the document, or (2) the contents of the document are
6 alleged in the complaint. *Knieval v. ESPN*, 393 F.3d 1068, 1076
7 (9th Cir. 2005).

8 Defendants ask the court to take judicial notice of a document
9 entitled "Liberty Mutual Insurance/Termination Form."¹ The form
10 indicates that plaintiff voluntarily resigned her employment with
11 "Rancharrah/Middlefork Limited Partnership." Defendants argue that
12 by alleging in her complaint that she was terminated, plaintiff
13 alleged the contents of this form, and the form is thereby
14 incorporated by reference. Defendants further argue that the
15 allegation in the complaint that plaintiff was terminated is a
16 direct reference to the contents of all documents plaintiff signed
17 in relation to her alleged termination. Defendants' arguments are
18 without merit. Plaintiff's complaint neither alleges the contents
19 of the insurance form nor do her claims depend on it. Rather, the
20 form merely relates to plaintiff's claim that she was terminated.
21 It is therefore not incorporated by reference, and defendants'
22 request for judicial notice (#7) is **DENIED**.

23 **II. Motion to Dismiss or for a More Definite Statement**

24 In considering a motion to dismiss under Rule 12(b)(6), the
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26 ¹ Although the second page of defendants' motion references a "Nevada
27 Equal Rights Commission Charge of Discrimination" and a "U.S. Equal
28 Employment Opportunity Commission Charge of Discrimination," no such
documents are attached to the motion, and defendants make no mention of them
in their reply. Therefore, the court concludes that reference to such
documents was in error.

1 court must accept as true all material allegations in the complaint
2 as well as all reasonable inferences that may be drawn from such
3 allegations. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1150 n.2 (9th Cir.
4 2000). The allegations of the complaint also must be construed in
5 the light most favorable to the nonmoving party. *Shwarz v. United*
6 *States*, 234 F.3d 428, 435 (9th Cir. 2000).

7 "Under the notice pleading standard of the Federal Rules,
8 plaintiffs are only required to give a 'short and plain statement'
9 of their claims in the complaint." *Paulsen v. CNF, Inc.*, 559 F.3d
10 1061, 1071 (9th Cir. 2009) (quoting *Diaz v. Int'l Longshore &*
11 *Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir. 2007)).
12 While this rule "does not require 'detailed factual allegations,' .
13 . . it demands more than an unadorned, the-defendant-unlawfully-
14 harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct.
15 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S.
16 544, 555 (2007)). A pleading is insufficient if it offers only
17 labels and conclusions, a formulaic recitation of the elements of a
18 cause of action, or "naked assertions devoid of further factual
19 enhancement." *Id.* (internal punctuation omitted). Thus, a
20 complaint "must contain sufficient factual matter . . . to state a
21 claim to relief that is plausible on its face." *Id.* The
22 plausibility standard demands "more than a sheer possibility that a
23 defendant has acted unlawfully." *Id.*

24 Where a complaint "is so vague or ambiguous that [a] party
25 cannot reasonably prepare a response," the court may order the
26 plaintiff to file a more definite statement. Fed. R. Civ. P.
27 12(e); see also *Bautista v. Los Angeles County*, 216 F.3d 837, 843
28 n.1 (9th Cir. 2000).

1 Defendants move to dismiss plaintiff's first claim for relief,
2 wrongful discharge. Defendants first argue that the type of
3 wrongful discharge claim alleged is unclear. However, the
4 complaint clearly asserts that plaintiff's termination violated
5 public policy. (Pl. Compl. ¶¶ XIV, XV; see also Pl. Opp'n 2).
6 Further, it does not assert that plaintiff had an employment
7 contract. Accordingly, while the complaint does not assert a claim
8 for bad faith discharge or breach of the contract of continued
9 employment, it does assert a claim for tortious discharge in
10 violation of public policy.

11 However, even if the legal theory of plaintiff's claim is
12 sufficiently stated, the underlying factual basis is not.

13 The complaint alleges that plaintiff learned defendant
14 Middlefork Limited Partnership was refusing to allow a lawful
15 worker's compensation claim to be filed, that she insisted
16 defendants follow the law and allow the claim to be filed, and that
17 she was terminated for insisting defendants follow the law. While
18 plaintiff's opposition explains that she was terminated for
19 "refusing to prohibit an employee from filing a worker's
20 compensation claim," (Pl. Opp'n 2), this allegation is not at all
21 clear from the complaint. The word "insist" is ambiguous and does
22 not imply that plaintiff was refusing to engage in activity that
23 was unlawful or in violation of public policy or was engaging in
24 conduct that public policy favors. See *Bigelow v. Bullard*, 901
25 P.2d 630, 632 (Nev. 1995) (To prevail on a tortious discharge claim
26 "the employee must be able to establish that the dismissal was
27 based upon the employee's refusing to engage in conduct that was
28 violative of public policy or upon the employee's engaging in

1 conduct which public policy favors.").

2 The complaint also alleges, though not directly in the first
3 claim for relief, that plaintiff was terminated for demanding that
4 defendant John Harrah cease his sexual harassment of other women.
5 (Pl. Compl. ¶¶ IX-XI). In her opposition, plaintiff asserts that
6 this also states a claim for wrongful discharge in violation of
7 public policy. (Pl. Opp'n 4). However, neither plaintiff's
8 complaint nor her opposition contains any facts sufficient to state
9 a claim of this nature.

10 Accordingly, the defendants' motion for a more definite
11 statement is **GRANTED**. On or before January 27, 2012, the plaintiff
12 shall file an amended complaint that clearly identifies the conduct
13 she engaged in, or refused to engage in, which forms the basis for
14 her wrongful discharge claim. Failure to do so will result in the
15 court's dismissal of the claim. Fed. R. Civ. P. 12(e). In light
16 of this order, the defendants' motion to dismiss plaintiff's first
17 claim for relief is **DENIED WITHOUT PREJUDICE**.

18 Defendants' motions as to the remainder of plaintiff's
19 complaint are also denied. Plaintiff sufficiently states a claim
20 for intentional infliction of emotional distress and ratification.
21 Even though punitive damages are a type of relief and not an
22 independent cause of action, defendants have cited no law
23 forbidding plaintiff from pleading her request for punitive damages
24 in a separate count.

25 In accordance with the foregoing, defendants' request for
26 judicial notice is **DENIED**. Defendants' motion for a more definite
27 statement is **GRANTED IN PART** and **DENIED IN PART**. It is granted as
28 to plaintiff's first claim for relief for wrongful discharge, and

1 it is denied in all other respects. And defendants' motion to
2 dismiss is **DENIED WITHOUT PREJUDICE**.

3 IT IS SO ORDERED.

4 DATED: This 9th day of January, 2012.

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6 
7 UNITED STATES DISTRICT JUDGE
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